

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: ERIC L. SILLAMAN AND RHODA F. CAIN, Debtor, RESURGENT CAPITAL SERVICES LP, AS SERVICER FOR LVNV FUNDING, LLC Movant/Claimant, v. ERIC L. SILLAMAN AND RHODA F. CAIN, and RONDA J. WINNECOUR, Ch. 13 Trustee Respondents	Bankruptcy No. 08-26789-TPA Chapter 13 Related to Doc. No. 64
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MOTION FOR ORDER DIRECTING PAYMENT OF FUNDS TO CLAIMANT
PURSUANT TO 11 U.S.C. § 347 and 28 U.S.C. § 2041, et seq.

AND NOW, comes Claimant, Resurgent Capital Services LP, As Servicer for LVNV Funding, LLC (the “Claimant”), by and through its undersigned counsel, Bernstein-Burkley, P.C., and files this Motion for Order Directing Payment of Funds to Claimant Pursuant to 11 U.S.C. § 347 and 28 U.S.C. § 2041, et seq. (the “Motion”), representing as follows:

The Parties

1. Resurgent Capital Services LP is a limited partnership with offices in Greenville, SC. True and correct copies of the W-9 form for Claimant are attached hereto as Exhibit A.

2. Respondents, Eric L. Sillaman and Rhoda F. Cain, filed for bankruptcy protection pursuant to Chapter 13 of the Bankruptcy Code on 10/10/2008.

3. Ronda J. Winnecour is the duly appointed Chapter 13 Trustee (“Trustee”) and is currently acting in such capacity.

Jurisdiction and Venue

4. This matter is a core proceeding and this Court has jurisdiction pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Movant seeks relief pursuant to 11 U.S.C. §§ 347 and 350 and 28 U.S.C. § 2041, et seq.

Factual Background

5. On or about 7/13/2011, Claimant filed a Proof of Claim in the present bankruptcy in the amount of \$1,566.53 at Claim No. 21-1. The unclaimed funds are in reference to a debt for the account ending in 8311 (“the Account”) owing to North Star Capital Acquisition, LLC care of Zenith Acquisition Corp. originating from a Capital One account (“NORTH STAR”) A true and correct copy of the Proof of Claim is attached hereto as Exhibit B.

6. At the time the Proof of Claim was filed, North Star Capital Acquisition was the owner of the claim.

7. As set forth in the Bill of Sale and Assignment of Accounts dated 12/30/2011 (“Bill of Sale”), NORTH STAR sold a portfolio of accounts to Sherman Originator III LLC (“SHERMAN”). A true and exact copy of the Bill of Sale has been attached hereto as Exhibit C.

8. The Account was included in the portfolio of accounts acquired by SHERMAN, labeled Portfolio #17491, and the Account is part of the electronic file referenced in the Bill of Sale. This data was received only in electronic format and not in any other format, such as a written document. SHERMAN transferred the entire portfolio of accounts of Portfolio #17491 to its affiliated company LVNV Funding LLC (“LVNV”) on 12/30/2011, and LVNV received the

electronic file received by SHERMAN as part of the Bill of Sale. The Account was part of the accounts acquired by LVNV. Accordingly, LVNV is the current owner of the Account; a true and exact copy of the Transfer and Assignment has been attached hereto as Exhibit D.

9. Resurgent Capital Services LP, as the servicer of the Account, is authorized to submit this claim on behalf of LVNV; a true and exact copy of the Power of Attorney given by LVNV has been attached hereto as Exhibit E.

10. The last payment received on the Account was on 9/20/2000. There is still an outstanding balance of \$1,566.53 remaining on the Account. Latoya McDowell, Legal Services Coordinator of Resurgent Capital Services LP has reviewed the business records for Resurgent Capital Services LP and has sworn on the penalty of perjury that LVNV is the current owner of these funds; a true and exact copy of an Affidavit of Indebtedness has been attached hereto as Exhibit F.

11. The original dividend check to North Star Capital Acquisition was placed on reserve.

12. On 12/16/2013, the Trustee filed a Receipt of Funds Received for Deposit into Registry Account. Receipt Number 7538 with the Clerk, U.S. Bankruptcy Court (the "Clerk"). The Trustee stated that the check represented unclaimed funds owed to North Star Capital Acquisition. As shown above, Claimant is the owner of those funds. A true and correct copy of the Receipt is attached hereto as Exhibit G.

13. Claimant purchased the account from NORTH STAR and did not receive the \$1,254.74 referenced in the Report as being monies to be distributed to Claimant.

14. Pursuant to 11 U.S.C. § 347 and 28 U.S.C. §§ 2041 and 2042, Claimant requests that this Honorable Court issue an order directing payment by the Clerk to the Claimant in the

amount of \$1,254.74 and further directing that payment be made in care of Dilks & Knopik, LLC, who has been granted Limited Power of Attorney by Claimant for the purposes of this Motion. A true and correct copy of the Limited Power of Attorney is attached hereto as Exhibit H.

WHEREFORE, Claimant, Resurgent Capital Services LP, as Servicer for LVNV Funding, LLC, respectfully requests that this Honorable Court reopen the present bankruptcy and grant the Claimant's Motion for Order Directing Payment of Funds to Claimant.

Respectfully submitted,

BERNSTEIN-BURKLEY, P.C.

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Dated: May 6, 2016